

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 26 of 1995

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NARAINDAS MOTIRAM TEHELYANI

Versus

GUJ WATER RES DEVELOP COR LTD

Appearance:

MR KM PATEL for Petitioner
M/S TRIVEDI & GUPTA for Respondent No. 1
MR D.V.GHARANIA AGP for Respondent No. 2
GOVERNMENT PLEADER for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 14/07/97

ORAL JUDGEMENT

Petitioner herein is a former Panchayat servant, whose services were transferred to the Gujarat Water Resources Development Corporation (hereinafter referred to as the Corporation). After transfer of his service to the Corporation, the petitioner was promoted as Deputy

Executive Engineer in the year 1979 and as Executive Engineer on 6th June, 1987. The petitioner claims further promotion as Superintending Engineer with effect from 29th June, 1995 when respondent No.3 was nominated by the Government and sent on deputation to the Corporation as Superintending Engineer. It is the claim of the petitioner that promotion to the post of Superintending Engineer was required to be made in accordance with the relevant Rules which are known as Gujarat Water Resources Development Corporation Ltd (Classification, Recruitment and Promotion) Rules, 1990. The petitioner claims that in view of the Rules then existing, the post of Superintending Engineer could have been filled in by promotion alone from amongst the Executive Engineers who have 15 years' professional experience with minimum 7 years experience as Executive Engineer. The petitioner did qualify for promotion and he ought to have been promoted as Superintending Engineer. Further the respondent no.3 was brought on deputation without the authority of law and appointment of respondent No.3 as Superintending Engineer in the Corporation was violative of the above referred Recruitment Rules.

2. It is not disputed that the post of Superintending Engineer was required to be filled in by promotion from amongst the Executive Engineers having requisite experience. It is also not disputed that in view of the said Recruitment Rules, no person could have been nominated by Government to be sent on deputation to the Corporation as Superintending Engineer. This action of the respondents in appointing respondent No.3 as Superintending Engineer on deputation is ex-facie illegal and contrary to the Rules. The petitioner had a rightful claim for promotion to the said post of Superintending Engineer. I am informed that pending this petition, petitioner has been compulsorily retired from service on 10th June, 1997.

3. In view of the above facts, the petition is allowed. The respondent-Corporation is directed to consider the claim of the petitioner for promotion to the post of Superintending Engineer in accordance with the relevant Recruitment Rules. If the petitioner is found to be suitable for such promotion, he be granted deemed promotion as Superintending Engineer with effect from 29th June, 1995. In that event, the petitioner shall be entitled to claim pay fixation in accordance with the rules and arrears of salary from the date of deemed promotion as Superintending Engineer till the date of retirement. Petition is allowed to the aforesaid extent

only. Rule is made absolute accordingly. There shall be
no order as to costs.

JOSHI